

**REMARKS**

**Claim Amendment**

The Examiner rejected Claims 1, 2, 5, 6, 8-11, 13, 15-17, 19 and 24-31 under 35 U.S.C. §103(a) as obvious over Katz *et al.* in view of Ajami *et al.*, both of record. The Examiner objected to Claims 3, 4, 7, 12, 14, 18, 20, 22 and 23 as dependent on the rejected base claims, otherwise allowable.

Claims 1, 2, 5, 6, 7, 11, 14, 16, 17, 19, 21, 23 are cancelled without prejudice.

Claim 3 has been amended and recast in an independent form by including the subject matter of Claim 1. Claim 3 has further been amended by incorporating the subject matter of Claim 4.

Claims 4, 8, 13 and 15 have been amended to reflect their dependency on Claim 3 as amended.

Claim 12 has been amended to reflect its dependency on Claim 3 as amended and to provide the proper antecedent basis for the recited elements.

Claim 18 has been amended and recast in an independent form by including the subject matter of Claim 16, now cancelled. Claim 18 has further been amended by incorporating the subject matter of Claim 21, now cancelled. Claim 18 has also been amended to provide the proper antecedent basis for the recited elements.

Claims 20, 22, 24, 25 and 28-31 have been amended to reflect their dependencies on new Claim 34.

Claim 24 has further been amended to recite that the composition was administered up to 24 hours after the onset of an inflammatory condition. Support for this amendment is found throughout the Exemplification section and specifically in FIGs. 4A through 4C and in Example 4, page 19, lines 22-23 of the specification as filed.

New Claims 32-35 have been added.

New Claim 32 is the original Claim 7 recast in independent form.

New Claim 33 is drawn to the subject matter of Claim 18 as amended. Claim 33 recites that a composition administered to a patient suffering from an inflammatory condition *consists essentially of* an ester of an alpha-ketoalkanoic acid selected from the recited group and,

optionally, biologically safe organic or inorganic cations. Applicants note that MPEP §2111.03 explains that:

[t]he transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention.  
In re Herz, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976)

Thus, new Claim 32 excludes therapeutic ingredients not specified in the claim, but encompasses binders, carriers, excipients and other drug vehicles that do not affect the therapeutic properties of the claimed combination. Support for this amendment is found in the original Claim 17 and on page 10, lines 5-6 of the specification as filed.

New Claim 34 is drawn to the subject matter of Claim 18. Claim 34 recites the modes of administration of the composition of the invention. This amendment is supported by the disclosure on page 10, line 20 of the specification as filed.

New Claim 35 is directed to the subject matter of Claim 18 as amended and recites that a composition administered to a patient suffering from an inflammatory condition *consists essentially of* ethyl pyruvate. Thus, new Claim 35 excludes therapeutic ingredients not specified in the claim, but encompasses binders, carriers, excipients and other drug vehicles that do not affect the therapeutic properties of ethyl pyruvate. Support for this amendment is found in the original Claims 17 and 22 as well as on page 10, lines 5-6 of the specification as filed.

This amendment introduces no new matter.

#### Rejection and Objection to Claims

Applicants believe that the present Amendment places base Claims 3 and 18, as amended, in condition for allowance. Applicants further amended Claims 3, 4, 8, 12, 13, 15, 20, 22, 24, 25, 28-31 by changing their dependency to base Claims 3 as amended and new Claim 34 drawn to the subject matter of Claim 18 as amended. Applicants believe that the present amendment obviates the Examiner's rejection of Claims 1, 2, 5, 6, 8-11, 13, 15-17, 19 and 24-31 under 35 U.S.C. §103(a).

Applicants further submit that new Claims 32-35 are allowable because the scope of the new claims does not exceed the scope of Claim 18 as amended and because no new matter has been introduced.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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